



# Executive Order 12-04

## *Supporting and strengthening implementation of the state's wetland policy*

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### **Northeast Minnesota Regional Meeting Minnesota Discovery Center, Chisholm, MN**

#### **Meeting Notes**

**October 11, 2012**

Dave Weirens began the meeting by asking everyone in attendance to introduce themselves and briefly state why they came to today's meeting. He then reviewed the origination of Executive Order 12-04, its contents, and the process that is being used to comply with it. Mark Lindquist began the discussion of the Order's issues by reviewing the input that has been received at prior meetings.

#### Issue #1: De minimis Exemption.

- There is no de minimis for road bank projects, meaning that we have to track all impacts, which adds expenses to road authorities. It's not practical or worth the time to mitigate for a few square feet of impact. This is a disincentive to report small projects. Is there a reasonable de minimis for road projects? The Corps Regional General Permit #3 has a de minimis.
- The de minimis works fine, it is complicated, but a landowner can get what they want 80% of the time.
- The 5% provision is way too complicated. You have to go measure the wetland, determine how much the landowner owns vs. other landowners, etc., which is way too burdensome.
- Agree that the 5% provision is a problem – you typically don't have a full delineation to be able to make that determination.
- If a person does not use all of their de minimis the first time, they cannot come back at a later time and impact more wetland under the de minimis. It should be cumulative.
- De minimis should be based on function, more emphasis on the science, not just location (e.g. shoreland) or type. Maybe a high functioning wetland would be less than 10,000 sq. ft. but a degraded wetland could be 10,000 square feet or more.
- People that deal with de minimis daily can understand it, but it is impossible to explain to landowners, they do not understand type, etc. The 20 square foot provision is a problem (it used to be 400 sq. ft.), as you realistically can't do anything inside the building setback zone. If a person wants to do a good project – it could be riprap to prevent erosion – but now they have to go through the wetland replacement plan process. Does that make sense? It also takes time and money (landowner and local government) to do a replacement plan for very small amounts. It doesn't make sense to process a replacement plan for 75 sq. ft.

- De minimis is a complex, tough issue that requires a big investment in personnel and resources (funding). This needs to be one of the recommendations in response to this order.
- We need to help people better understand the connections between the little projects and the big picture (cumulative effects).

Issue #2: Alignment of Pre-Settlement Zones on Watershed Boundaries.

No comments were made on this issue.

Issue #3: Consistent Review, Approval and Implementation.

- A goal of participating in today's meeting is to get projects done in a timely fashion - not delayed for a year through another construction season.
- It is difficult to get projects done timely, when applicants come in late, trying to beat the freeze and want to get their project done asap. Project review is tied to the growing season which can result in lengthy timelines when landowners come in at the last minute.
- Permits should be issued quicker, once rather than with multiple agencies.
- Interagency cooperation expands the process.
- There should be a statewide plan – then provide flexibility to local governments, this would result in more buy-in.
- The Corps participates in the development of local Comprehensive Wetland Plans but then does not accept them, which negates their benefits and the flexibility provided under state law. State assumption of 404 would help. Can the State do a statewide wetland plan?
- The goal should be to do what is best for the state, not playing different regions against each other.
- The Corps Rule is simple, but the St. Paul District Guidance is very complex. Would the Corps be more willing to negotiate if Assumption were on the table?
- We've been able to work with BWSR and our SWCD staff – we don't always agree but we can come to a conclusion. We're constantly held up by the Corps. The State needs to look at the relationship with the Corps and 404. It doesn't make sense for 7 people to drive to International Falls to look at a project three times.
- Part of the Executive Order report should be to work with our Congressional delegation to make assumption of the 404 program easier and workable.
- 404 Assumption may be too much for BWSR and local governments at this point, but assumption for mitigation should be pursued to streamline the process, and provide better mitigation sites. BWSR should have that authority.
- 404 has a programmatic no net loss goal, meaning that there can be a net loss on some projects and a gain on others. Is there a way we can get to more of a big picture, programmatic approach to achieve no-net-loss? We should look more at function and value, not acres.
- The DNR Permit to Mine process has gotten better in the past few years, but is still a heartache for local governments where the mitigation is occurring. Local governments are not getting a response to their comments, don't know if their feedback has any bearing on decision-making, and basically feel left out of the process.

- Some mining mitigation projects get 100% credits when they should probably receive less. For example, County staff may see ponded water on a site every summer, but then someone comes in late summer or fall from out of the county and declares it fully drained when it is not. The mining mitigation projects are not getting approved by the LGU (approved by DNR). Things have gotten better, but I still look back at what was approved and just shake my head.
- Everyone wants good quality mitigation sites. Local governments are willing to assist the DNR and mining companies to find good sites – we are not against mitigation in our counties. We live here, we know what impairments we have, we interact with landowners on a daily basis, and we understand our resources and resource needs. By not involving the locals, you’re setting yourself up for failure.
- Instead of fighting about it, the DNR and mining companies should come and talk with county staff and say “we’re looking in this area for this type of project, how does this fit in with your local plans, your impairments, your resource goals, etc.? Can you help us find good sites?” The current sites are not good and should be getting far less than 100% credit.
- We’re still not getting adequate responses to our comments from the DNR. All I hear is “we’ve got that taken care of.” As a local staff, I know the area and would like to be listened to more.
- There are some great staff resources in the BWSR St. Paul office. Hopefully DNR will listen to them and rely on their expertise. DNR staff are fairly new to wetlands and WCA is complex.
- Every agency wants something different; the authority between agencies is an issue. All we (mining interests) want is to get something approved, yet there is infighting going on and some aren’t happy.
- A mining company killed a small project outside of a permit area due to poorly trained staff.
- Public safety should not be compromised due to wetland regulations.
- Agency staff are parochial and controlling in the decision making process, they are too enamored about the process and who gets to make the decision, rather than what the decision should be.
- The Corps has not made a decision on an emergency dam repair, after nearly a year. Now they are asking a lot of irrelevant questions. The DNR made their decision within several weeks.
- A mine may be on the edge of the bank service area, which can result in increased ratios for replacement outside the BSA even if the impacts and mitigation are essentially on the same project site.
- WCA coordination and administration should be more user friendly. Trying to do too good of a job can drive people away from the good things we are trying to accomplish.
- Local government implementation is a strength of WCA. I previously worked in Alaska, and still am very impressed with how seamlessly things flow through the local and State levels here in MN. The federal level is a different issue.
- There should be a banking program for small users/impacts with a lower cost of credits. Why doesn’t BWSR have a bank where people can pay into it and BWSR goes out and does the replacement? Perhaps have a mining bank? It is X dollars per acre, put that amount in the mining bank account and get your credit. Why have a road bank? Why have an agriculture bank?

Issue #4: Adequacy of Wetland Bank Program Funding.

No comments were made on this issue.

Issue #5: Costs and Benefits of Wetland Mitigation Targeted to Specific Watershed.

- Replacement should not occur in Koochiching County where there are so many wetlands; replacement should be done in the prairie pothole area. People would feel better if they could replace a pothole that would help the ducks.
- There may be more benefit to replacing out of watershed, even at a lower replacement ratio.
- It's OK to mitigate all of Aitkin County's impacts in Aitkin County, but it doesn't make sense to replace large impacts from elsewhere in Aitkin County.
- It does not make sense for a landowner to impact a high quality wetland, and then replace it with a lower quality wetland elsewhere. The goal should be to replace with a high quality wetland within the watershed, but banks/replacement opportunities are often not available in the NE.
- Wetland preservation is the only wetland banking opportunity in Cook County.
- Why not get preservation credits for past public projects (state and federal easement programs, etc.)?
- Need to build trust to allow mitigation to occur outside of the watershed. Need to work together better as a statewide community.
- WCA should allow more out of watershed opportunities; have a team identify where there are ecological opportunities. Where are the impacts and where are the best places to mitigate them? What is the vision for the best place to do restorations? Look for mitigation opportunities that are holistic - looking at both wetlands and adjacent uplands.
- A lot of WCA is about addressing wildlife habitat, small wetland areas are better for wildlife. There is value to small seasonal disconnected wetlands – they need to be restored strategically in complexes.
- Need a vision for wetland management – re-establish the vision of what Minnesota should look like 20 years after what we do here. Duck hunters thought of restoring the prairie pothole region. Public value should require that replacement be done in the best interest of the state; watershed replacement does not adequately address state needs.
- Allow in-lieu fee banking and for the payment to be equal to the costs in the watershed where the mitigation should occur. The funds could be spent in another watershed for more benefit, greater public value; there would be the same number of credits, but higher public value even if fewer acres. Mitigation should be directed to where it makes most sense, but we can't make it more expensive.
- If \$10 million was used for mitigation in the Red River Valley rather than Aitkin County, we would get much greater habitat, flood reduction, and water quality benefits.
- When counties like Aitkin County lose agricultural land, edge habitat is lost and diversity is lost.
- These large mitigation projects are mainly for mining. Mining companies don't have options in St. Louis County, so they look close but elsewhere (Aitkin, LOW). They are limited to where they can go. Costs increase as you move farther out. Maybe the ratio shouldn't be 1.5:1 but rather 1:1 or 0.5:1. The mining companies will go where it is cheapest.
- The replacement ratio should be reduced when replacement occurs in other areas (outside of northern Minnesota) to acknowledge higher land values. The process could be standardized so an impact to a high quality/value wetland in the NE could be replaced with a high quality/value wetland in the Red River Valley at a 1:1 ratio. If impacting low and replacing high, could be less than 1:1. Would this be enough incentive to get replacement elsewhere? The report should recommend that this be discussed.

- BWSR has the authority to establish other replacement ratios. Does 404 inhibit that? BWSR should talk to the Corps about it.
- Look for unique opportunities for mitigation. Are there things other than wetlands that could provide a lot of benefits and be good projects?

Issue #6: Strategic Use of Funding Sources to Achieve Continued Restoration of Drained Wetlands.

- There are opportunities and benefits to combining voluntary and regulatory wetland restorations.
- There are opportunities to combine wetland and upland streambank restorations in some degraded areas that could be a good mitigation value. An in lieu fee program could be used to address specific watershed needs, i.e. work in the north shore, combine uplands, streams, wetlands, etc. (wetlands are just one ecological component of an ecosystem).
- When targeting restorations – why does it take so long? Time and money is wasted as a result. Another participant responded that the particular project referred to took a lot of time because of the Corps.
- We should not be looking for “museum piece” restorations, but wholesale restorations that are strategically placed.
- Hunters want to protect wetland functions; geographic distribution does not speak to functions. We should not get into the trade game, that the south got to drain its wetlands in the past and now the north wants its fair share.
- There are unique opportunities to restore natural wetlands where the Mississippi River has been ditched.

Other Issues.

- What has been the involvement of wetland bankers and tribal interests in this process?
- A goal of this process should be to reduce restoration orders.
- Is WCA consistent with its original intent? Does the end result make sense? Are we accomplishing no net loss?
- There are exceptional circumstances in the north, which can make it look like we do not like wetlands (we do). Where is the law working? It is working is people are taking care of impacts in their own areas. I would like to see mitigation in the less than 50% areas, places that have lost a lot of wetlands and where the duck hunters want them.
- Regulatory programs should build more trust; some people believe the program will be gamed. There need to be understandable expectations and outcomes.
- What does no net loss mean? What is the goal of WCA?
- A consequence of defining no net loss is that the less than 50% areas should provide more and for wetland restoration, the current law has an unequal impact.
- >80% counties have an issue when they see a whole section of the state that continues to get drained due to agriculture exemptions. The no-net-loss discussion should include agricultural areas and not just >80% areas. The agricultural areas should also start doing some wetland replacement.

- Is WCA meeting the needs of its customers? County engineers are curtailed from making safety improvements.
- How much wetland replacement is there compared to impacts for public road projects?
- There should be a better definition of public value and have the law require a no net loss of public value. Many of the less than 50% counties are in the single digits of remaining pre-settlement wetlands. Where is there greater public value 1,000 acres of wetland in St. Louis County or 1,000 acres in Wilkin County? Replacement ratios are hampering where mitigation occurs. We need a more even distribution of wetlands across the state.
- When considering wetland change and no-net-loss, there is a need to count voluntary and involuntary gains (i.e. beaver dams). Are >80% areas gaining wetland area?
- Is an outcome of this Order to re-do the Wetland Report? There are a lot of questions that the data could answer.
- There are mandatory EAW triggers for stream restoration, when it is required for mitigation under 404. An EAW for that only delays the benefits.
- Northern counties are penalized because of their wetlands.
- WCA is a tough program that needs investment of staff, money and education.
- WCA was and is a compromise. That means we are stuck with some problems along with the good.
- Look at areas like North Dakota and South Dakota where there is no wetland protection at the state level. You can see the resource destruction happening before our eyes. We (in MN) are lucky to have WCA, and a lot of people in other states wish they had WCA.